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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 619

GRANDVIEW DAIRY, INC.,
Petitioner,

vs.

MARVIN JONES, War Food Administrator, and CLAUDE R. WICKARD, Secretary of Agriculture of the United States.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

Harry L. Marcus,
Counsel for Petitioner.

Herbert L. Maltinsky,
Of Counsel.

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GRANDVIEW DAIRY, INC.,

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MARVIN JONES, War Food Administrator, and CLAUDE R. WICKARD, Secretary of Agriculture of the United States,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The undersigned petitioner respectfully prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Second Circuit which affirmed a judgment entered July 17th, 1945 (R. 123, 124) by the United States District Court for the Eastern District of New York.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on July 17th, 1946 (R. 141). The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13th, 1925.

Statement of Facts

This action was instituted in the United States District Court for the Eastern District of New York (R. 22-26) to review a ruling made by the War Food Administrator pursuant to authority conferred upon him by Executive Order #9334 April 19th, 1943.

The original petition, upon which the ruling of the War Food Administrator was made, was filed pursuant to Section 8c (15) (A) of the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U. S. C. 601, 608c.

The jurisdiction of the District Court to review a ruling made by the Secretary of Agriculture, to whose duties and functions the War Food Administrator succeeded, is found in Section 8c (15) (B) of the Agricultural Marketing Agreement Act of 1937, as amended. The District Court is thereby vested with original jurisdiction in equity to review such ruling.

The petition presented to the War Food Administrator arose under a Federal Marketing Order known as number 27 which regulated the handling of milk in the Metropolitan New York Milk Marketing Area. The particular provisions of the order as it existed during the period involved in this proceeding is set out in the record at page 99 and was known as Section 927.7 (f).

The petitioner is a handler of milk within the meaning of the terms of the Agricultural Marketing Agreement Act and within the meaning of the provisions of Federal Marketing Order #27 (R. 22).

In addition to the sale and distribution of milk and milk products, it operated milk receiving plants and milk manufacturing plants. The plants involved in this proceeding were situated in Webster Crossing, Livingston County, New York (R. 53). At that location it had one plant which

received raw fluid milk from producers. That plant was equipped solely for the receiving of milk from producers and the shipment of milk to the marketing area (R. 10, 98). Another plant was situated about 60 feet distant from the aforementioned plant. This second plant was a milk products manufacturing plant. This manufacturing plant was equipped to separate milk into cream and skim milk and to manufacture various dairy products (R. 10).

Federal Order #27 was amended in the early part of 1940, effective May 1st, 1940, to provide for diversion payments and allowances to handlers, for milk received from producers at a plant equipped only for the receiving and shipping of milk to the marketing area, which milk was moved to a second plant outside of the marketing area and there separated into cream and skim milk or manufactured (R. 99).

In June 1940 petitioner operated its enterprises at Webster Crossing, New York, in the manner and in accordance with the provisions of Section 927.7 (f) of Marketing Order #27 so as to entitle it to the market service payments provided therein.

In the interim between the adoption of the amendments and the diversions of milk by petitioner in June 1940 the former Market Administrator for the Metropolitan Milk Marketing Area was succeeded by a new Market Administrator (R. 90) who refused to follow the rulings of his predecessor and who denied petitioner's claims for market service payments for the month of June 1940.

A petition for review of such denial was instituted by petitioner in accordance with the provisions of the Agricultural Marketing Agreement Act. After extensive and prolonged hearings and arguments before the hearing master and the Secretary of Agriculture the determination of the Market Administrator was overruled and he was directed

to make payment to petitioner for market service claims for the month of June 1940.

After considerable delay payment was ultimately made to petitioner for the month of June 1940 and a voluntary payment was made for the month of July 1940. Its claims for the subsequent months during which the same provision of the order was in effect (August 1940 to February 1941) had then accrued. These claims were disallowed by the Market Administrator.

A petition was thereupon filed to review the disallowance of petitioner's claims. In this proceeding after protracted hearings the disallowance was upheld and petitioner's claims for market service payments were denied.

The present action was instituted in the United States District Court for the Eastern District of New York to review such denial and motions for summary judgment were made by both sides, which resulted in a final judgment granting the defendants' motion for summary judgment and denying the plaintiff's motion. An appeal was taken to the Circuit Court of Appeals for the Second Circuit which affirmed the judgment of the Court Below.

By stipulation the record of the two prior proceedings before the Secretary of Agriculture was not printed, but the original records were transmitted to the Circuit Court of Appeals (R. 126). If this Court grants this application, the original records will be transmitted to this Court by similar stipulation.

Reasons for Granting the Writ

1. There is involved in this case an important question affecting the dairy industry in the State of New York, which is of vital interest to "thousands of producers" (R. 115, f. 344). It concerns not only petitioner, but other handlers as well (R. 115), and affects a large number of handlers

similarly situated who have proceedings pending before the Secretary of Agriculture which involve a sum in excess of $1,000,000.00 (R. 51). The particular provisions of Federal Order #27 involved in this proceeding have never been presented to this Court. The decision of the Circuit Court of Appeals in this case is the first and only ruling by an Appellate Court on Section 927.7 (f) of Federal Marketing Order #27 as amended effective May 1, 1940.

2. Involved in this proceeding is the question as to how far and to what extent an Administrative Official, by personal legislation, may inject requirements or conditions not found within the boundaries of the Statute or Order. That question was presented to the Circuit Court of Appeals but no ruling was made thereon.

In a case four square with the present case, the Circuit Court of Appeals for the 7th Circuit held that a Market Administrator may not implement a marketing order by the addition of requirements not found therein (*Barron Coop. Creamery* v. *Wickard,* 140 Fed. 2nd 485, 488, 489). This Court has likewise so ruled in *Addison* v. *Holly Hill,* 322 U. S. 607, 616, 617.

3. The question as to what extent the doctrines of *res judicata* and *stare decisis* apply to administrative determinations prominently appears in this case. This question deserves profound consideration, and a ruling by this Court would settle numerous conflicts found in intermediate court decisions. The opinion of Judge Augustus N. Hand in this case (R. 1898) reflects the conflict. The concurring opinion of Judge Learned Hand (R. 1898) concedes that the question as to how far the doctrine of *res judicata* should be made applicable is confusing and that the present opinion of the Circuit Court of Appeals will not serve to clarify it. The War Food Administrator, in reaching his determination, conceded that "It is true that the part which

res judicata should play in administrative proceedings is not yet clearly defined" (R. 114). It is, therefore, apparent that despite all that has been written during the current growth of Administrative Tribunals the question is still in a state of flux and is confusing to Judges, administrative officials, Lawyers, textbook and law review writers.

4. An important question under the Federal Constitution as to whether the determination was made in accordance with law is likewise presented in this case. This question is considered under the proposition that there was not substantial evidence in the record to support the determination. The Statute, providing for a review of a ruling by the Secretary of Agriculture, widely differs from other laws investing the Courts with jurisdiction to review determinations made by administrative tribunals.

Questions Presented

On the basis of the foregoing, petitioner desires this Court to review the following questions:

1. Whether an Administrative Official may go beyond the provisions of the Statute and Administrative Order conferring authority upon him and inject personal provisions and requirements not found within the confines of the Statute or Order.

2. Whether a determination by the Secretary, deciding questions of fact, may be reversed within the administrative hierarchy when the same facts and the same parties are involved in a subsequent proceeding concerning the same order.

3. Whether the determination made by the War Food Administrator was made in accordance with law, when the findings of fact, conclusions and ruling are not supported by substantial evidence.

Prayer for a Writ

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to the United States Circuit Court of Appeals for the Second Circuit commanding said last named Court to certify and send to this Honorable Court a full and complete transcript of the record of all proceedings in the within cause and that petitioner may have such other and further relief or remedy in the premises as to this Court may seem proper.

Dated: Brooklyn, New York, October 15th, 1946.

GRANDVIEW DAIRY, INC.,
Petitioner,

By HARRY L. MARCUS,
Attorney and Counsel for Petitioner,
50 Court Street, Brooklyn 2, N. Y.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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GRANDVIEW DAIRY, INC.,

Petitioner,

vs.

MARVIN JONES, War Food Administrator, and CLAUDE R. WICKARD, Secretary of Agriculture of the United States,

Respondents

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The grounds upon which the jurisdiction of this Court is invoked, a statement of the facts involved, with questions presented appear in the accompanying petition and for the sake of brevity are not here repeated.

Opinions Below

The opinion of the Circuit Court of Appeals (R. 133-140) has not yet been reported. The opinion of the District Court (R. 118-122) is reported in 61 F. Supp. 460.

Specifications of Errors

The Court Below erred as follows:

1. It failed to consider the usurpation of power by the Market Administrator by legislatively injecting additional requirements not found in the Order as a condition precedent for the petitioner to qualify for market service payments.

2. It erred in reaching a determination that the doctrine of *res judicata* did not apply to the case at bar.

3. It erred in holding that there was substantial evidence to support the findings of the War Food Administrator and in so doing it overlooked the mandate of the Statute and the decisions of this Court defining substantial evidence.

Argument

Point I

In June, 1940, after the provisions of the Order had been in effect two months, the Market Administrator sent a letter to all handlers (R. 90) stating:

> "It is my opinion that the separation and manufacture of milk on premises in the immediate proximity or contiguous to the plant where received from producers does not entitle the handler receiving the malk from producers to the payment of claims for Market Service payments pursuant to the above mentioned section."

No authority was vested in him under the Order to make such interpretation. The Secretary of Agriculture recognized the Market Administrator's limited authority when he ruled in the first proceeding which involved the month of June 1940 that:

> "It is concluded that the market administrator should have allowed market service payments and

charges for the month of June 1940, for diversion of milk from Plant 1 to Plant 2 of the petitioner used for manufacturing purposes as provided in the Order and duly presented in accordance with the provisions of Part 927.7 (f) of the Order. This milk was diverted from Building No. 1 to the manufacturing plant of petitioner referred to as Building No. 2 located at Webster's Crossing, New York." * * *

"The Market Administrator erred in ruling that the milk diverted by the petitioner in the month of June 1940, from Building No. 1 to Building No. 2 of its plant located at Webster's Crossing, New York, for manufacturing purposes was not subject to market service payments and charges as provided in the order."

The right of the Market Administrator to determine a handler's eligibility for market service payments and to determine what is a plant, was not given to him under the Order until it was amended on February 28th, 1941, effective March 1st, 1941 (R. 65, 66).

Prior to that amendment his only power was to administer the terms and provisions of the Order (Section 927.2 (c)):

"The market administrator has no 'inherent powers' and neither the market administrator nor the Dairy and Poultry Branch has been given power to issue what the text writers call 'legislative' regulations. The only authority we know of is that granted in Section 927.2 (c) to administer 'the terms and provisions' of the order." [In re: *Middletown Milk & Cream Co., Inc.* (A.M.A. Doc. No. 27-42), 3 A.D. 84.]

The Circuit Court of Appeals for the 7th Circuit ruled in the case of *Barron Coop. Creamery et al.* v. *Wickard,* 140 Fed. 2nd 485, 488, 489 that prior to an amendment of a marketing order expressly implementing the Market Administrator's right to make an interpretation, he has no such power. A similar ruling was made by this Court in

Addison v. *Holly Hill*, 322 U. S. 607, 616, 617 wherein it was held that there is no warrant for an Administrator to extend a Statute beyond its provisions even though experience may disclose that it should have been made more comprehensive.

The Circuit Court of Appeals in the case at bar was in error in failing to consider the unwarranted extension of the Market Administrator's power by his own acts. The error is further accentuated by the tantamount admission by the Secretary of Agriculture that the Administrator did not have the power since it was only by the approval of the amendment of February 28th, 1941 that the right of the Administrator to make a determination as to what is a plant was expressly provided.

Hence, this case presents a question which has been decided adversely to Administrative Officials both by this Court and the Circuit Court of Appeals for the 7th Circuit.

Point II

The Circuit Court of Appeals devoted a considerable portion of its opinion to a discussion of the question of *res judicata*. The concurring opinion of Judge Learned Hand (R. 140), points out the confusion existing among the Courts and authorities on the question of *res judicata* in Administrative determinations. Much has been written on the subject (Administrative Res Judicata, Parker; Illinois Law Review May 1945, Volume XL #1 56-83; Schopflocher, The Doctrine of Res Judicata in Administrative Law, Wisconsin Law Review January, 1942, pp. 1-42; Dwan Administrative Review of Judicial Decisions Columbia Law Review July 1946 Volume XL #4; Administrative Decisions As Res Judicata, California Law Review Volume 27 #6 September 1941).

This Court has had the question presented to it in various forms, but there has been no clear cut decision on the

precise question involved in this case. The case of *United States* v. *Stone & Downer Co.*, 274 U. S. 225, cited by the Circuit Court of Appeals is clearly different on its facts and does not involve a situation such as is presented in the case at bar.

In the proceeding at bar there was a determination by the final Administrative Officer declaring that the petitioner is entitled to market service payments under the Order as it existed in June 1940. In the present case, the same petitioner, the same order and the same movements of milk occurred in the months from August 1940 to February 1941. No change of parties, circumstances, acts or Statutes occurred in the intervening time. It is clearly apparent that the doctrine of *res judicata* if it be held to apply to administrative determinations should be held applicable to the facts in this case.

This Court has never had presented to it a similar situation. For the sake of clarity and for the guidance of intermediate Courts and administrative tribunals, a final determination by this Court is of utmost importance.

Point III

The Circuit Court of Appeals erred in reaching a conclusion that the findings of fact made by the War Food Administrator were in accordance with law.

The Statute under which a review is authorized in a proceeding under the Agricultural Marketing Agreement Act differs from Statutes permitting reviews of other administrative tribunals. In the instant case the Congress of the United States vested the Court with jurisdiction in equity to review a ruling by the Secretary and directed that if the Court determines that such ruling is not in accordance with the law the proceeding shall be remanded. The use of the language vesting the Court with jurisdiction

in equity displays to a marked degree the intention of Congress to provide for a broad review unfettered by any statutory presumptions as to the conclusive effect of the findings made by the War Food Administrator.

When the Circuit Court of Appeals held that the findings of the War Food Administrator are supported by substantial evidence it disregarded the record of the proceedings before it and in its stead supported an abstract theory based upon conjectural possibilities and differences not grounded in substantial evidence.

The conclusions reached by the War Food Administrator contain mixed matters of fact and law which remove them from the realm of primary evidenciary facts and subject them to judicial review thereby authorizing the Court to substitute its judgment for that of the War Food Administrator, *Helvering* v. *Tex Penn Co.,* 300 U. S. 481, 491.

In the decision of this Court in *St. Joseph Stockyards Co.* v. *United States,* 298, U. S. 38, 52 the delineation of the duties and obligations of a Court of Review prescribed therein has not been followed by the Circuit Court of Appeals.

The enormous growth of administrative tribunals has lead to new concepts of law. This Court has during the past few years from time to time formulated basic requirements to guide the constantly increasing number of administrative decisions. However, it must be apparent that unless a reconsideration of the fundamental concepts of due process of law and substantial evidence is made by this Court, administrators will overlap judicial and legislative functions in ever increasing fields until by its very growth and force it will tend to destroy the Judicial Power vested in duly constituted Courts of Law by the Constitution of the United States.

The broad ramifications in the case at bar and the importance of the questions involved extend beyond the boundaries of the present controversy. The questions presented herein should be reviewed by this Court.

Conclusion

It is, therefore, respectfully submitted that the petition for the writ of certiorari prayed for in this case should be granted by this Court.

Dated: Brooklyn, New York.
October 15th, 1946.

HARRY L. MARCUS,
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Brooklyn 2, New York.

HERBERT L. MALTINSKY,
Of Counsel.

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 619

GRANDVIEW DAIRY, INC., PETITIONER

v.

MARVIN JONES, WAR FOOD ADMINISTRATOR, AND CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court on petitioner's complaint (R. 118–122) is reported in 61 F. Supp. 460, and the opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 133–141) is reported in 157 F. 2d 5.

JURISDICTION

The judgment of the court below was entered on July 17, 1946 (R. 141). The petition for a writ of certiorari was filed October 17, 1946. The

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. 347).

QUESTIONS PRESENTED

1. Whether the finding of the War Food Administrator that the unitary, integrated operations conducted by petitioner at Webster Crossing made the enterprise one plant is a permissible interpretation of Section 927.7 (f) of the milk-marketing order under which petitioner was operating, and whether this finding is supported by substantial evidence.

2. Whether a contrary ruling by the Assistant Secretary of Agriculture in a prior administrative proceeding brought by petitioner covering a different period of time was *res judicata* of the issues in the present proceeding.

STATUTE AND ORDER INVOLVED

The Milk Order which is involved was issued by the Secretary of Agriculture pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U. S. C. 601, 608c. The Order is known as Federal Milk Order No. 27—New York Metropolitan Marketing Area. It was originally issued on August 5, 1938 (3 F. R. 1945), and was reissued with amendments March 1, 1940, effective May 1, 1940 (5 F. R. 1258, 1585). Section 927.7 (f) of this Order (R. 99) provides:

> *Market service payments.* Any handler may make claims, on forms applied by the

market administrator, for payments out of the producer-settlement fund under the conditions set forth in this paragraph with respect to milk received from producers at a plant equipped only for the receiving and shipping of milk to the marketing area which was moved to a second plant outside of the marketing area and there separated into cream and skim milk or manufactured. The market administrator shall, after preliminary audit of such claim to check the actual movement of the milk and the proper classification thereof, make payment to such handler, subject to final audit, out of the producer-settlement fund, or issue credit against balances due by such handler to the producer-settlement fund, at the following rates and under the following conditions:

* * * * *

STATEMENT

Petitioner is a handler of fluid milk and milk products which it ships to the New York Metropolitan Marketing Area. Pursuant to Section 927.7 (f) of the Order, petitioner made claims to the Market Administrator for the period August 1940 to February 1941, inclusive, for market service payments with respect to milk which petitioner received from producers at its Building No. 1 at Webster Crossing, New York, and moved by pipeline to its Building No. 2 approximately 50 feet away, where it was manufactured or separated into cream and skim milk (R. 81). The contention was that the two buildings were to be

treated as separate plants for purposes of the payments under Section 927.7 (f). The Market Administrator denied these claims (R. 78).

As authorized by Section 8c (15) (A) of the Act, petitioner filed with the Secretary of Agriculture a petition for a review of the ruling of the Market Administrator. The Assistant to the War Food Administrator, after a hearing, found that the unitary, integrated operations of petitioner at Webster Crossing made the enterprise one plant and approved denial of petitioner's claims (R. 116, 117).[1] Respecting the operations at Webster Crossing he made the following findings of fact:

During the period covered by the claims petitioner owned two buildings at Webster Crossing, one of which was referred to as Building No. 1 and the other as Building No. 2. Building No. 1 was not equipped for separation or manufacture of milk but was equipped for receiving milk and shipping it to the marketing area, and for moving it by pipe-line to Building No. 2 by pumping it through a removable, sanitary, pipe-line connecting the two buildings. Building No. 2, which was

[1] The functions of the Secretary of Agriculture under the Act were transferred to the War Food Administrator by Executive Orders No. 9322, 9334, and 9392 (8 F. R. 3807, 5423, 14783). The administrative ruling in this case was made by an Assistant to the War Food Administrator who acted for the Administrator pursuant to authority delegated (8 F. R. 8087) under the Act of April 4, 1940, 54 Stat. 81, 5 U. S. C. 516a *et seq.*

not equipped for receiving milk from producers, was operated for manufacturing purposes. (R. 98.)

The two buildings are approximately 50 feet apart and the intervening space is vacant. They are connected by a pipe-line for moving milk between the buildings; a conduit for steam, for heating and power purposes (the steam-producing unit being in Building No. 1); water pipes; and wires for transmitting electricity for lighting and power purposes (there being a single meter to measure the electric power used in both buildings). The office for both buildings and their only telephone are located in Building No. 2, and all of the records relative to the handling of milk or milk products, in either or both buildings, are kept in this building. There is one superintendent for the two buildings. They have only one boiler, which is in Building No. 1. The heat for pasteurizing in Building No. 2, the heat for the preheater in that building, and the hot water which it uses, all come from the boiler in Building No. 1. As operated during the period involved, Building No. 2 was completely dependent upon Building No. 1. (R. 101–102.)

A prior administrative proceeding under Section 8c (15) (A), involving a claim for a market service payment for milk moving from petitioner's Building No. 1 to its Building No. 2 at Webster Crossing during June 1940 culminated in a ruling

in favor of petitioner (R. 91).[2] The Assistant to the War Food Administrator found that such prior proceeding involved a claim for a different period of time and a different record, which, in the light of the present record, was "incomplete", and he rejected the contention that the principle of *res judicata* foreclosed inquiry into the validity of petitioner's claims (R. 103, 111–113).

Petitioner, as authorized by Section 8c (15) (B) of the Act, then filed in the federal district court a bill to review the ruling of the Assistant to the War Food Administrator (R. 22–26). Issue was joined by the filing of an answer (R. 26–29) and the case came before the court on cross motions for summary judgment (R. 2–6). The court, holding that the administrative ruling was in accordance with law, entered a judgment dismissing the complaint (R. 119–124). The Circuit Court of Appeals affirmed this judgment (R. 141).

ARGUMENT

I

Petitioner contends (Pet. 4–5) that the case presents a question which is of vital interest to thousands of milk producers in the State of New York and which affects a large number of handlers similarly situated who have proceedings pending before the Secretary of Agriculture in-

[2] Based on this ruling, petitioner's claim for July 1940 was also paid (R. 12).

volving a sum in excess of $1,000,000. But while the subject of market service payments may be of vital interest to thousands of producers, the decision sought to be reviewed does not question the validity of market service payments as such. The decision deals solely with the propriety of the ruling upon the question whether, on the facts of this case, petitioner's two buildings at Webster Crossing constitute a receiving plant and a separate processing plant or are both parts of a single plant at which petitioner receives and processes milk. The ruling does not rest upon or announce any principle of general application and whenever a like question is presented upon the claim of another handler, it must be decided upon its own particular facts. Furthermore, even if it be assumed that there might be substantially parallel facts in some other case, the determination now in issue can be a precedent only for periods prior to March 1, 1941. Section 927.7 (f), of the milk marketing order, as amended effective March 1, 1941, provides that no market service payments may be made if the manufacturing plant is less than half a mile from the receiving plant (5 F. R. 4971–4972, 6 F. R. 1181).

II

Petitioner's contention (Pet. 10–12) that the Market Administrator had no power to determine whether petitioner's two buildings constitute a

single plant or two plants within the meaning of Section 927.7 (f) of the Order is wholly without merit; indeed, the court below did not even mention this contention. Since the Order permitted the Market Administrator to make a market service payment only if there are two plants, he was obviously empowered to determine whether there were or were not the circumstances which authorize payment. The amendment to the Order effective March 1, 1941, which bars any payment under the Section 927.7 (f) if the receiving plant and manufacturing plant are within half a mile of each other clearly does not indicate that under the prior Order the word "plant" can be construed only as meaning "building". The amendment constitutes a specific restriction upon the right to a diversion allowance and it operates to eliminate controversies, such as that in the present case, as to whether two interconnected buildings in close physical proximity constitute a single receiving and processing plant or separate plants.

Petitioner's contention (Pet. 13–14) that the findings of the War Food Administrator are not supported by substantial evidence is equally without merit. There is no suggestion that there was not substantial evidence to support the Administrator's specific findings and the contention apparently is that the specific findings do not provide substantial support for the finding based thereon that the integrated operations of petitioner at

Webster Crossing made the enterprise one plant. The court below, in disposing of this contention, said (R. 138):

> We can see no practical difference between a building one part of which is used for receiving fluid milk and another for making milk products for the fluid and the two contiguous buildings of the plaintiff which were connected by a pipe line through which the milk was delivered from the first to the second. We think that it was within the province of the War Food Administrator to treat situations so nearly identical as equivalents of one another.

In any event certiorari will not be granted simply to review the evidence and the inferences to be drawn from it (*General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U. S. 175, 178), particularly when, as in this case, the administrative finding has been approved by two courts.

III

Petitioner contends (Pet. 12–13) that this Court has never passed upon the application of the doctrine of *res judicata* to administrative determinations in circumstances precisely like those here presented. We submit, however, that even assuming *arguendo* that the Administrator is bound by the doctrine, under accepted principles the prior ruling as to the earlier period would not be *res judicata* in this case.

Petitioner's claim for market service payments for the period beginning in August 1940 is a different claim than that made for the month of June 1940. In suits upon different claims or demands there is estoppel by judgment only if a question upon which recovery of the second demand depends has "under identical circumstances and conditions" been previously concluded by a judgment between the parties. *New Orleans* v. *Citizens' Bank,* 167 U. S. 371, 396. The question of what the evidence showed as to the character of petitioner's two buildings at Webster Crossing was not the same in the two proceedings since there were serious inadequacies in the record in the first proceeding as compared with the later one (R. 112–113). This is not a case, therefore, where, as in *Tait* v. *Western Maryland Ry. Co.,* 289 U. S. 620, 626, "all the facts" in evidence in the second proceeding were before the adjudicating body in the former one.

Furthermore, even though the manner in which petitioner's operations may have been conducted in the two periods was "substantially the same * * * they were a completely different set of events, and they were not the set of events litigated in the earlier cases". *Engineer's Club* v. *United States,* 42 F. Supp. 182, 187 (C. Cls.), certiorari denied, 316 U. S. 700. See also to the same effect *Henricksen* v. *Seward,* 135 F. 2d 986 (C.

C. A. 9); *Campana Corp.* v. *Harrison,* 135 F. 2d 334 (C. C. A. 7); *Stoddard* v. *Commissioner,* 141 F. 2d 76 (C. C. A. 2); *Gillespie* v. *Commissioner,* 151 F. 2d 903, 906 (C. C. A. 10). In the *Engineer's Club* case the Court of Claims held that the earlier judgment was not binding in that situation, distinguishing *Tait* v. *Western Maryland Ry. Co., supra,* on the ground that there "the events sought to be tried in the second suit were the identical historical events which had been tried in the first" (42 F. Supp. 188). The *Engineer's Club* unsuccessfully sought to bring the *res judicata* issue before this Court on certiorari, 316 U. S. 700, 317 U. S. 705. There is even less reason to grant the writ here, where the prior order is administrative rather than judicial.

Petitioner does not contend that the decision below is in conflict with any decision of this Court or of another circuit court of appeals. Not only is there no question of conflict but the decision below accords with the holdings of this Court in closely analogous situations. *United States* v. *Stone & Downer Co.,* 274 U. S. 225; *Federal Trade Commission* v. *Raladam Co.,* 316 U. S. 149, 152; *Wallace Corp.* v. *National Labor Relations Board,* 323 U. S. 248, 253.

CONCLUSION

The decision below is correct and there is no conflict of decisions. It is therefore respectfully

submitted that the petition for a writ of certiorari should be denied.

GEORGE T. WASHINGTON,
Acting Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
CHARLES H. WESTON,
J. STEPHEN DOYLE, JR.,
Special Assistants to the Attorney General.

NOVEMBER 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1946